IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NOS.793/2005
ALONG WITH
WRIT PETITION NOS.1023,2005, 1024/2005, 1025/2005, 1026/2005, 1027/2005 AND 1028/2005.

WRIT PETITION NO.793 OF 2005

John Lemos).. Petitioner

Versus

M/s.Vardhaman Developers Ltd.).. Respondents

ALONG WITH
WRIT PETITION NO.1023 OF 2005

Peter Misquitta).. Petitioner

Versus

M/s.Vardhaman Developers Ltd.).. Respondents

WRIT PETITION NO.1024 OF 2005

Mrs.Lyra Travasso).. Petitioner

Versus

M/s.Vardhaman Developers Ltd.).. Respondents

WRIT PETITION NO.1025 OF 2005

Mrs.Josepine Fernandes).. Petitioner

Versus

M/s.Vardhaman Developers Ltd.).. Respondents

WRIT PETITION NO.1026 OF 2005

Mrs.Cancecio Ferrao).. Petitioner

Versus

M/s.Vardhaman Developers Ltd.).. Respondents

WRIT PETITION NO.1027 OF 2005

Prakash Tulsidas Umarakia).. Petitioner

Versus

M/s.Vardhaman Developers Ltd.).. Respondents

AND
WRIT PETITION NO.1028 OF 2005

Mrs.Vijaya Nitaji Bhosale).. Petitioner

Versus

M/s.Vardhaman Developers Ltd.).. Respondents

Ms.Seema Sarnaik with Mr.S.A.Sawant for the Petitioner in all the Writ Petitions.

Mr.V.A.Thorat i/b.Koshore Thokardas & Co. for the Respondents in all the Writ Petitions.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 20TH JULY 2005

P.C.:

. The Petitions are being heard together as the same question is involved in all the Petitions and all the Petitioners are tenants of the Respondents. These Petitions are filed against the order dated 26th October 2004 passed by the Small Causes Court at Bombay in Int.Notice No.3032/2004 in R.A.E. Suit No.174/261/2003. This Interim Notice was taken out by the Defendants-present Petitioners seeking permission to file Written Statement. It appears that the Suit was filed on 26th December 2002 on the ground of nuisance and for eviction.

On the next day an interim order was passed after hearing the Defendants-Petitioners herein, directing parties to maintain status quo. A submission was made on behalf of the Petitioners that the property had vested in MHADA and that they had obtained a no objection certificate from MHADA to repair the suit premises. The trial Court, however, deemed it fit to pass an order directing the parties to maintain status quo.

2. Admittedly, the Petitioners, who were authorised by MHADA to carry out repairs, commenced repairs despite the directions of the trial Court. A notice was taken out by the Plaintiffs-Respondents herein for striking off the defence of the Petitioners. The Respondents contended that the order directing parties to maintain status quo has been violated by the Petitioners and, therefore, it was necessary to strike off the defence of the Petitioners. Accordingly, an order was passed on 7th August 2003 striking off the defence of the Petitioners and holding them in contempt. Writ Petition No.8740 of 2003 was filed before this Court challenging this order besides two other orders of the trial Court. While disposing of the Petition on 13th January 2004, it was held that a single Petition challenging three different orders was not maintainable and the Petition was rejected. The Petitioners, therefore, filed a Review Petition before this Court. That Review Petition has

also been rejected.

3. Admittedly, three different Petitions have not been filed till today by each of the Petitioners challenging the three different orders. Therefore, the orders (i) striking off the defence of the Petitioners, (ii) holding them in contempt and (iii) directing the Police to ensure that the order of status quo was complied have become final. The Petitioners then moved the trial Court by way of an application under Order 39 Rule 11 of the Civil Procedure Code for permission to file their Written Statement since they had tendered an apology. The trial Court after considering the submissions of the Petitioners has, by a reasoned order, held that a mere apology would not suffice since the Writ Petition challenging the earlier orders had been rejected. In these circumstances, the trial Court discharged the notice and the Suit was directed to be heard.

4. Parties were given an opportunity to settle the entire dispute. However, attempts made to reach an understanding have failed.

5. Heard parties at length.

6. I see no reason why the order passed by the trial Court should be interfered with. The three orders mentioned above have become final. Three separate Writ Petitions have not been filed after a single Writ Petition impugning these orders was dismissed. The Petitioners now cannot be heard to say that the orders can be ignored and they should be granted permission under Order 39 Rule 11(2) of the Civil Procedure Code to file their Written Statement. The trial Court was not in error in rejecting the applications of the Petitioners. The powers under Order 39 Rule 11(2) can be exercised when the defaulting party makes amends for the breach. Structural repairs have been carried out in breach of the order directing the parties to maintain status quo, ostensibly by MHADA. The Petitioners have tried to justify their actions by contending that they were not responsible for violating any of the orders of the Court and have tendered an apology. In such circumstances, there is no need to interfere with the impugned order. Rejected.